

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:09-CR-216-FL-8

No. 5:15-CV-523-FL

ZIYAD YAGHI,)	
)	
Petitioner,)	
)	
v.)	<u>STATEMENT OF MATERIAL</u>
)	<u>FACTS (LOCAL CIVIL</u>
)	<u>RULE 56.1(a))</u>
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Respondent, by and through the United States Attorney for the Eastern District of North Carolina, hereby files this statement of undisputed material facts in support of its alternative motion for summary judgment as to Petitioner's claims of ineffective assistance of counsel.

1. James M. Ayers, II ("counsel") was appointed as counsel for Petitioner on December 21, 2010. [D.E. 689].
2. As part of his representation of Petitioner, counsel "had to review thousands of pages of discovery, audio tapes and transcripts. This review was accomplished as quickly as possible." [Exhibit A at 1, ¶ 5].
3. Counsel filed numerous written motions and notices on behalf of Petitioner. [Exhibit A at 2-5, ¶ 6].

4. Counsel took the deposition of "Nebil Hussein Al Shyal, on November 10, 2010, regarding Petitioner's bride search." [Exhibit A at 5, ¶ 9]
5. Counsel decided not to question Evan Kohlmann on cross-examination at trial based on a concern that such questioning would open the door for Kohlmann to link his analysis to Petitioner specifically. This decision was strategic in nature. [Exhibit A at 6, ¶ 15].¹
6. Members of Petitioner's family (Amad Yaghi and Ali Yaghi) misrepresented their identity during telephone calls with counsel. Amad Yaghi also ultimately refused to meet with the State Department to facilitate his testifying in this matter. [Exhibit A at 6, ¶ 13].
7. Neither Adnan Al-Shishani nor Mohammed Yaghi was suggested as a witness to counsel by Petitioner. [Exhibit A, Exhibit 17 at 1].
8. Counsel pursued a trial strategy based on freedom and speech and religion after the government's lead witnesses denied having entered into a specific conspiracy with Petitioner. [Exhibit A at 7, ¶ 16].

¹ The declaration of counsel and the associated exhibits are filed as part of an Appendix to this statement of material facts.

9. Counsel consulted with Petitioner regarding the changed strategy referenced in paragraph 8, supra. [Exhibit A at 7, ¶ 16].
10. After consulting with counsel, Petitioner agreed not to present witnesses during his case-in-chief. [Exhibit A at 8, ¶ 22].
11. "Petitioner's bride claim and defense were compromised by certain information that [counsel] received during [his] investigation of the Jordan trip." [Exhibit A at 6, ¶ 14].
12. Counsel believed that, had Petitioner "moved forward with witnesses during Petitioner's case in chief, . . . Petitioner's defense of seeking a bride and simply visiting with family in Jordan would have been compromised in many ways." [Exhibit A at 8, ¶ 22].
13. "Witnesses were not called to establish Petitioner's bridal search or Jordan travels in accordance with Petitioner's instructions during trial." [Exhibit A at 9-10, ¶ 27].
14. Counsel made a strategic decision not to question or confront Jude Mohammad's mother, concluding that a "crying mother that blames Petitioner for her missing son and who is determined to compromise Petitioner is best removed from the stand as soon as practical." [Exhibit A at 7-8, ¶ 20].

Respectfully submitted, this 12th day of May, 2016.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has this
the 12th day of May, 2016, been served upon counsel for
Petitioner by CM/ECF filing system, as follows:

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